

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Jabari Dailey,

Petitioner,

v.

Case No. 1:07cv643

Warden, Madison Correctional Institution,

Judge Michael R. Barrett

Respondent.

ORDER

This matter is before the Court on the Report and Recommendation filed by the Magistrate Judge on March 19, 2008 (Doc. 10).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). No objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. 636, this Court find the Magistrate's Report and Recommendation to be correct.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**; Petitioner's Motion to Hold Petitioner's Writ of Habeas Corpus in Abeyance (Doc. 9) is denied; Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is denied with prejudice. This matter is terminated from the docket of this Court.

3. A certificate of appealability will not issue with respect to the state law claim alleged in Ground Two of the petition, because petitioner has failed to

make a substantial showing of the denial of a constitutional right based on such claim. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). However, a certificate of appealability would issue with respect to the claim alleged in Grounds One and Three challenging the sufficiency of evidence with respect to petitioner's felonious assault conviction, because petitioner has made a substantial showing of a "viable claim of a constitutional right" or that the issues presented are "adequate to deserve encouragement to proceed further." See *id.*; see also *Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting the Report and Recommendation would be taken in "good faith," and, therefore, should **GRANT** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

S/Michael R. Barrett
Michael R. Barrett, Judge
United States District Court